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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as
Successor in Interest for RICHARD
DESANTIS, deceased, and as Guardian Ad
Litem for DANI DESANTIS,

Plaintiffs,

v.

CITY OF SANTA ROSA, *et al.*,

Defendants.

Case No.: C 07 3386 JSW

**PLAINTIFFS' OBJECTIONS TO
DEFENDANTS SPECIAL
INSTRUCTIONS**

Courtroom 11, 19th floor
Judge: Jeffrey S. White

INTRODUCTION

The parties have met and conferred over the weekend and resolved many disputes. Some of the instructions proposed need slight revisions but are not in dispute, e.g., 1.2 (Claims and Defenses) and 9.2 (Elements and Burden of Proof). Plaintiffs object to certain special instructions proposed by the Defendants as follows:

OBJECTIONS

SPECIAL INSTRUCTION NO. 1, PROBABLE CAUSE:

This stipulation does not merit becoming a jury instruction. Plus, it could be used to suggest or imply that the shooting was justified simply because there was probable cause to detain Richard DeSantis. If the instruction is given, it should include a second sentence that states: “Probable cause to detain a person does not justify the use of deadly force.”

SPECIAL INSTRUCTION NO.2 – RESPONSE TO PERSON WITH MENTAL ILLNESS:

This is only half true. *Drummond v. City of Anaheim*, 343 F.3d 1052 (9th Cir. 2003) This emphasizes one of many factors that go into determining whether Richard Celli acted with a purpose to harm unrelated to a legitimate police purpose.

SPECIAL INSTRUCTION NO. 3, 14TH AMENDMENT CLAIM:

Plaintiffs object to two parts of this instruction: (1) language that implies an officer can use deadly force simply to take a person into detention; compared to recognized justifications such as self-defense or defense of others; and (2) the paragraph at lines 15-17 – “If an officer is required to make a snap judgment of an escalating situation.” Otherwise, the rest of the paragraph is redundant.

First the “shocks the conscience” test applicable to this case is “purpose to harm” versus “deliberate indifference”. Most cases recognize that the shocks the conscience standard applies whenever there is no substantial time to deliberate. The shocks the conscience test has been applied to cases where the defendant(s) had minutes or hours to deliberate.

Second, the plaintiffs dispute that Richard Celli made a “snap judgment in an escalating situation”. Rather, it is plaintiffs’ position that the situation de-escalated after DeSantis was hit by the Sage and that there was time to (1) assess DeSantis further, (2) fire additional Sage rounds

1 and/or (3) release the dog (Duke). This instruction is “argument” rather than a neutral statement
2 of the law.

3 **SPECIAL INSTRUCTION NO. 4, LIMITING – USE OF FORCE – DeSANTIS UNARMED:**

4 It is disputed whether Richard Celli knew or believed that Richard DeSantis was armed.
5 In a two minute period he never saw a weapon. He never saw evidence of a weapon, e.g.,
6 bulges. He never saw a furtive gesture to the waist or pocket. He denies being told by Patricia
7 DeSantis that he was unarmed. This is a credibility issue for the jury to decide. It cannot be said
8 as a matter of law that Celli believed DeSantis was armed at the time he shot him.

9 **SPECIAL INSTRUCTION NO. 7, LEAST INTRUSIVE DEGREE OF FORCE:**

10 The Court warned against offering language from cases that did not raise an issue
11 regarding a jury instruction, as opposed to dicta. This instruction could be easily misinterpreted
12 and misleading. It singles out some factors to be considered while ignoring others. It implies an
13 officer could escape liability for using deadly force in a situation where it was not necessary or
14 warranted. The evidence that Richard Celli used deadly force for a purpose to harm unrelated to
15 a legitimate police purpose is more than “hypothetical”, it is the issue to be decided. It would be
16 error to characterize plaintiffs’ theory of the case as “hypothetical”. Rather, the defendant’s
17 theory is more “hypothetical”.

18 **SPECIAL INSTRUCTION NO. 10, PLAINTIFFS’ 14TH AMENDMENT CLAIM/RULES CONCERNING**
19 **STANDARD:**

20 The plaintiffs seek to amend and modify this instruction to add – at line 13 the following
21 language: law enforcement purposes; “however, the use of excessive force is not a legitimate
22 law enforcement purpose.” See also, plaintiffs’ objections to Defendant’s Special Instruction No.
23 3. This instruction is central to the case and at the heart of the dispute between the parties.

CONCLUSION

Plaintiffs welcome the opportunity to argue these issues or further brief them.

Dated: September 16, 2012

SCOTT LAW FIRM

By: /s/ John H. Scott
John H. Scott
Attorney for Plaintiffs